

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT, REPEAL,
ARM 2.13.202, repeal of 2.13.201,	)	AND ADOPTION
2.13.203, 2.13.205, 2.13.206, and	)	
adoption of New Rule I pertaining to	)	
implementing HB 27: Defining	)	
eligibility and distribution of HB 27	)	
surcharge funds for wireless 911	)	
emergency systems	)	

TO: All Concerned Persons

1. On February 14, 2008, the Department of Administration published MAR Notice No. 2-13-395 pertaining to the public hearing on the proposed amendment, repeal, and adoption of the above-stated rules at page 210 of the 2008 Montana Administrative Register, Issue Number 3.

2. The department has repealed ARM 2.13.201, 2.13.203, 2.13.205, and 2.13.206 as proposed.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

2.13.202 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Automatic location identification (ALI)" means the automatic display at a public safety answering point of the location of the 911-accessible device, including supplemental information required by the Federal Communications Commission. ~~caller's telephone number, address/location of the telephone, and supplementary emergency services information of the location from which a call originates.~~

(2) through (4) remain as proposed.

(5) "Cost recovery" means recovering the allowable costs associated with carrier network element upgrades necessary for location-based emergency services.

~~(6) "Location-based emergency services" means emergency communications applications that include information associated with a subscriber's location.~~

~~(7)~~(6) "Selective routing" is a telephone system feature that enables all 911 calls originating from within a defined geographical region to be answered at a predesignated 911 jurisdiction. means the routing of a 911 call to the proper public safety answering point based upon the location of the caller.

AUTH: 10-4-102, 10-4-114, MCA

IMP: 10-4-101, MCA

4. The department had adopted NEW RULE I (2.13.207) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

2.13.207 WIRELESS ENHANCED 911 DISTRIBUTION FOR WIRELESS PROVIDERS (1) If there are not enough funds to fully reimburse a wireless carrier for a particular quarter, the unpaid balance will be paid:

(a) after the ~~county's~~ 911 jurisdiction's quarterly allocation of funds for wireless cost recovery has occurred; and

(b) to the maximum of that carrier's quarterly calculated percentage for that ~~county~~ jurisdiction.

AUTH: 10-4-102, 10-4-114, MCA

IMP: 10-4-301, 10-4-313, MCA

5. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Montana Independent Telecommunications Systems (MITS) has commented that in ARM 2.13.202, the definition of "Automatic location identification (ALI)" would result in the placing of unknown legal obligations on the telecommunications providers, in that it might require providers to provide potentially undefined emergency services information about their callers. Also, MITS fears that this definition might obligate carriers beyond what is required by the Federal Communications Commission for E911 compliance. MITS has suggested replacing "supplementary emergency services information of the location from which a call originates" with "required by the Federal Communications Commission."

RESPONSE #1: The department understands and concurs with the MITS comment, and has changed this definition to reflect this suggestion.

COMMENT #2: The Montana Telecommunications Association (MTA) has commented that in ARM 2.13.202, it is unnecessary to include "telephone number" in the definition of "Automatic location identification (ALI)", as it is previously defined in ARM 2.13.202(2). MTA has also commented that within this definition "911-accessible device" might be a more appropriate term than "caller's."

RESPONSE #2: The department understands and concurs with the MTA comments, and has changed this definition to reflect these suggestions.

COMMENT #3: MITS has commented that the definition of "Billing address" in ARM 2.13.202 does not properly exclude nonfacilities-based Montana wireless providers from receiving cost recovery funds, and that it should define a threshold eligibility for receiving 911 cost recovery funds.

MITS suggests the following alternative definition to "Billing address":

"Billing address" means the place of primary use for a subscriber of a wireless telecommunications provider having telecommunications facilities, to originate and to terminate wireless communications, physically located within a Montana local 911 jurisdiction.

RESPONSE #3: The department understands the concerns expressed in this comment, but declines to modify this definition because nonfacilities-based wireless providers in Montana are not eligible to receive cost recovery. This is clearly indicated in 10-4-101(28), MCA, "Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the Federal Communications Commission to provide facilities-based commercial mobile radio service within this state." Also, as described in 10-4-313(1)(c), MCA, "The department shall review all invoices for appropriateness of costs claimed by the wireless provider." This office has an inventory of facilities-based wireless providers in Montana, and will distribute surcharge funds to facilities-based wireless providers only. The definition of "Billing address", as suggested by MITS, seems to go beyond the scope of a definition, in that it includes unnecessary provisions for excluding nonfacilities-based wireless providers.

COMMENT #4: Montana Telecommunications Association (MTA) has suggested that the department include the word "allowable" before "costs" in the definition of "Cost recovery" in ARM 2.13.202 as this would better clarify that available funds are limited to allowable network upgrade expenses only.

RESPONSE #4: The department understands and concurs with the MTA comment, and has changed this definition as MTA has suggested.

COMMENT #5: MITS has commented that in ARM 2.13.202, the proposed definition of "Location-based emergency services" potentially imposes obligations upon wireless providers that fall well beyond any FCC requirement for E911 call delivery, and that it is overly broad and ambiguous.

RESPONSE #5: The department understands the concerns that MITS has expressed over this definition. And after further review of this definition, to eliminate potential misunderstanding or ambiguity, the department has determined that it is unnecessary to define this term at this time, and has removed this new definition from the rule.

COMMENT #6: MITS has commented that the proposed definition of "Selective routing" in ARM 2.13.202 is not consistent with any industry-standard definition of the term, and that the proposed definition might create a lot of confusion and ambiguity.

RESPONSE #6: The department understands the comments and concerns expressed by MITS and has changed this definition to match the National Emergency Number Association's definition of selective routing.

COMMENT #7: MTA has commented that within NEW RULE I WIRELESS ENHANCED 911 DISTRIBUTION FOR WIRELESS PROVIDERS (1)(a), the phrase "quarterly allocation for wireless" is incomplete, and MTA has suggested the following revision:

(a) After the county's quarterly allocation ~~for wireless has occurred~~ of funds for wireless enhanced allowable cost recovery has been distributed;

RESPONSE #7: The department understands the MTA comment. The department concurs that "quarterly allocation for wireless" is incomplete, and has changed the rule to better define "wireless". The purpose of NEW RULE I(1)(a) is to indicate the order of quarterly allocation, not distribution. The last part of the MTA definition suggests that the unpaid balances will be paid after "cost recovery has been distributed," thus implying two distinct quarterly distributions. The department does not concur with this portion of the MTA suggested definition.

By: /s/ Janet R. Kelly  
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By: /s/ Denise Pizzini  
Denise Pizzinni, Rule Reviewer  
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Certified to the Secretary of State March 17, 2008.